

IN THE ~~XXXXXX~~ SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

GMC CONTRACTING, INC., an Alaska
corporation, Plaintiff(s),

vs.

THE DELANEY GROUP, INC. dba
TETRA TECH CONSTRUCTION, a New
~~York corporation~~ Defendant(s).

CASE NO. 3AN-12- 6209 CI

SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT

To Defendant: CT Corporation System as Registered Agent for The Delaney
Group, Inc. dba Tetra Tech Construction

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented)

Traeger Machetanz, whose address is: 745 W. 4th Ave.,
Suite 502, Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.courts.alaska.gov/forms.htm, to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

You are hereby given notice that:

☒ This case has been assigned to Superior Court Judge CLARK
and Master _____

☐ This case has been assigned to District Court Judge _____

CLERK OF COURT

By: [Signature]
Deputy Clerk

3-29-12
Date



I certify that on 3-29-12 a copy of this Summons was ☐ mailed ☒ given to
☐ plaintiff ☐ plaintiff's counsel along with a copy of the
☐ Domestic Relations Procedural Order ☐ Civil Pre-Trial Order
to serve on the defendant with the summons.
Deputy Clerk [Signature]

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

Traeger Machetanz
Jessy Vasquez
Oles Morrison Rinker & Baker LLP
745 West Fourth Avenue, Suite 502
Anchorage, Alaska 99501-2136
Tel: (907) 258-0106
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Attorneys for Plaintiff

COPY
Original Received

MAR 29 2012

Clerk of the Trial Courts

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

GMC CONTRACTING, INC., an Alaska
corporation,

Plaintiff,

v.

THE DELANEY GROUP, INC. dba
TETRA TECH CONSTRUCTION, a New
York corporation,

Defendant.

Case No. 3AN-12- 6209 CI

COMPLAINT FOR MONEY DAMAGES

Comes now plaintiff GMC Contracting, Inc. ("GMC"), and for its complaint against The Delaney Group, Inc. dba Tetra Tech Construction ("Delaney") alleges, states and claims as follows:

PARTIES AND JURISDICTION

1. GMC is an Alaska corporation in good standing, having paid all taxes and filed all reports which are a prerequisite to its right to bring this action.

Complaint for Money Damages

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1 2. Delaney is a New York corporation that engages in trade and
2 commerce and has conducted business in the State of Alaska and is subject to
3 personal jurisdiction pursuant to AS 09.05.015. During the time frame relevant to
4 this matter Delaney and its employees would identify Delaney as doing business
5 under the name Tetra Tech Construction.

6 3. This court has subject matter jurisdiction pursuant to AS 22.10.020.

7 4. This court has venue pursuant to Alaska R. Civ. P. 3.
8

9 GENERAL ALLEGATIONS

10 5. GMC incorporates by reference the allegations made in paragraphs 1
11 through 4 above.

12 6. In or about spring, 2010, GMC approached Delaney with an opportunity
13 to participate in the design and construction of a wind farm on Fire Island, Alaska
14 ('project') for Cook Inlet Regional, Inc. ("CIRI").
15

16 7. Shortly thereafter, GMC and Delaney proceeded together in an effort to
17 obtain the project, with the understanding and agreement that, if successful,
18 Delaney would act as project design-builder and GMC would be Delaney's civil and
19 earthwork subcontractor.
20

21 8. Throughout this period of time, Delaney touted to CIRI and its project
22 manager the benefits of having GMC as it's civil and earthwork subcontractor, a
23 local subcontractor.
24
25

1 9. Throughout this time, GMC lobbied for the project with state legislators
2 and the local electric association.

3 10. Over the course of the next several months, GMC and Delaney met
4 with CIRI's project manager, Summit, and explored various options for reducing the
5 scope and cost of the project. During this time period, GMC also performed some
6 preliminary construction work on the project, both pursuant to contract with CIRI and
7 pursuant to contract with Delaney.
8

9 11. In the summer of 2011, the scope of the work was sufficiently defined
10 to enable Delaney to submit a cost proposal to CIRI to perform the project.
11 Similarly, the civil and earthwork portion of the work was sufficiently defined to
12 enable GMC to submit a cost proposal to Delaney to perform that portion of the
13 project work. GMC's proposal to perform the civil and earthwork portion of the
14 project was incorporated into Delaney's price proposal to CIRI.
15

16 12. CIRI awarded the prime contract to Delaney to perform the project in
17 late fall, 2011, and the contract price included the amount bid by GMC for the civil
18 and earthwork portion of the project.
19

20 13. It is customary in the Alaska construction community that if a prime
21 contractor utilizes the subcontractor's proposal in its proposal to the owner, that the
22 prime contractor is bound to use the services of the subcontractor with respect to the
23 phases of work upon which the subcontractor had submitted a proposal to the prime
24 contractor.
25

1 14. Upon receipt of award and limited notice to proceed, Delaney
2 proceeded to deal with GMC in a manner entirely consistent with Alaska
3 construction community customs and expectations.

4 15. In anticipation of an early project start, GMC contracted with Delaney
5 to mobilize to the site, and in fact did mobilize its equipment to the site to perform its
6 civil and earthwork services with an anticipated start date of April, 2012.
7

8 16. Throughout this period of time, Delaney repeatedly made reference to
9 GMC as being the project civil and earthwork subcontractor and in discussions with
10 GMC, discussed how "we" should approach the project.
11

12 17. At or about the time the project was awarded to Delaney, Delaney's
13 project manager left Delaney to take another job, but not before he reiterated to
14 Delaney that GMC was the project civil and earthwork subcontractor.

15 18. Delaney's replacement project manager continued to work with GMC
16 on refining the design and price as contemplated by the agreement between the
17 parties. Delaney began to demand that GMC provide details of how it planned to
18 perform the work – seeking information such as assumed quantities, equipment mix,
19 source of equipment rentals, labor assumptions and overall approach to the work.
20 Because GMC understood that there was an agreement that it would be the civil and
21 earth work subcontractor, GMC provided the requested information to Delaney. At
22 no point prior to mid-March did Delaney ever indicate to GMC that GMC was no
23 longer the civil and earthwork subcontractor on the project.
24
25

19. On or about March 6, 2012, GMC was informed by Delaney that it would not be performing the civil and earthwork portion of the project, and that instead Delaney would be self-performing that portion of the project work.

COUNT I—BREACH OF EXPRESS CONTRACT

20. GMC incorporates by reference paragraphs 1 through 19 above.

21. Through their statements and course of conduct, GMC and Delaney entered into a binding contract pursuant to which GMC agreed to perform the civil and earthwork portion of the project for Delaney for the price contained in the sub-bid, subject to any agreed upon changes to such contract.

22. Delaney breached its express contract with GMC, including without limitation the implied covenant of good faith and fair dealing, when it refused to allow GMC to perform pursuant to the terms of the contract and, instead, chose to self-perform the work.

23. As a proximate result of Delaney's refusal to honor its contract with GMC, GMC has been denied the opportunity to make a profit on its project work and recover a portion of its general overhead from the project subcontract proceeds (collectively "margin").

24. GMC is entitled to recover its lost margin, which is in the approximate amount of \$1.6 million.

COUNT II—BREACH OF IMPLIED CONTRACT

25. GMC incorporates by reference paragraphs 1 through 24 above.

26. Throughout the course of their relationship, GMC provided services to Delaney at Delaney's behest and with the mutual understanding that GMC would perform the civil and earthwork portion of the project for its proposed price if Delaney obtained the project contract award.

27. Delaney did obtain the project contract award, and the facts and circumstances surrounding the parties' relationship created an implied-in-fact contract, notwithstanding the parties' failure to reduce this agreement to writing.

28. Delaney breached its implied-in-fact contract with GMC, including the implied covenant of good faith and fair dealing, when it refused to allow GMC to perform pursuant to the terms of the contract and, instead, chose to self-perform the work.

29. As a proximate result of Delaney's refusal to honor its contract with GMC, GMC has been denied the opportunity to make a margin on its project work.

30. GMC is entitled to recover its lost margin, which is in the approximate amount of \$1.6 million.

COUNT III—PROMISSORY ESTOPPEL

31. GMC incorporates by reference paragraphs 1 through 30 above.

32. Throughout the course of their relationship, a fundamental understanding between the parties was that if Delaney was awarded the project prime contract, GMC would be awarded the civil and earthwork portion of the project work.

1 33. In reliance upon this understanding, GMC devoted substantial time and
2 resources toward the pursuit of this project and, upon project award to Delaney,
3 mobilized equipment to the project and ignored other bidding opportunities.

4 34. Delaney received a substantial benefit from GMC's efforts in that
5 Delaney was able to use GMC's pre-bid efforts including pricing to obtain the
6 contract with CIRI.
7

8 35. As a consequence of Delaney's refusal to honor their agreement with
9 GMC, GMC has suffered substantial damages in the form of direct costs of project
10 participation, idle and stranded equipment costs, and lost business opportunities.

11 36. As a further consequence of GMC's actions and Delaney's refusal to
12 honor the agreement with GMC, Delaney has unjustly obtained the benefit of the lost
13 margin which GMC would have made had Delaney honored its agreement.
14

15 37. In the interest of justice, Delaney should be estopped from denying the
16 existence of a binding contract between it and GMC.
17

18 38. Delaney breached this contract when it refused to allow GMC to
19 perform pursuant to the terms of the contract and, instead, chose to self-perform the
20 work and obtain the benefit of GMC's lost margin.

21 39. GMC is entitled to recover the amounts Delaney unjustly obtained by
22 refusing to honor the contract, i.e. the lost margin, which is in the approximate
23 amount of \$1.6 million.
24
25

COUNT IV—QUASI CONTRACT/UNJUST ENRICHMENT

40. GMC incorporates by reference paragraphs 1 through 39 above.

41. During the course of their relationship, GMC conferred a benefit upon Delaney in the form of use of its reputation and its work on the civil, earthwork, and logistics portions of the project as well as local customs expertise that were integral to Delaney in obtaining the project prime contract.

42. Delaney recognized and appreciated the benefits that GMC was providing and both parties understood that the quid pro quo for the receipt of GMC's benefits by Delaney was that GMC would receive the civil and earthwork portion of the project contract.

43. Rather than honoring that agreement, Delaney took the civil and earthwork portion of the project contract for itself at the price that GMC had provided, leaving GMC with nothing, while obtaining for itself GMC's projected margin, as well as all of the expertise that GMC had previously provided to assist Delaney in obtaining the project contract.

44. Such action on the part of Delaney was unconscionable and GMC is entitled to recover the amount that Delaney has been unjustly enriched, which includes without limitation, the lost margin, in the approximate amount of \$1.6 million, as well as the value of the expertise GMC provided which enabled Delaney to obtain the project prime contract.

COUNT V—UNFAIR TRADE PRACTICES

45. GMC incorporates by reference paragraphs 1 through 44 above.

46. Delaney's actions with respect to GMC constitute an unfair act or practice as that term is used in AS 45.50.471-561 insofar as Delaney's use of GMC's reputation, knowledge and expertise to obtain a contract with the understanding that GMC would obtain a subcontract for that use, and then failing to award GMC such subcontract and instead self-performing the work has the capacity or tendency to deceive.

47. Such actions caused GMC injury in the form of direct project costs, idle and stranded equipment and lost business opportunity, as well as the margin lost from the project work.

48. Such act is unfair, unethical, unscrupulous, and causes substantial injury to competitors or other businesses, *e.g.* GMC.

49. GMC is entitled to recover the damages caused by Delaney's unfair trade practice, which damages include without limitation, its lost margin in the approximate amount of \$1.6 million.

50. Pursuant to AS 45.50.531, GMC is also entitled to a trebling of the damages since GMC has suffered an ascertainable loss of money as a result of Delaney's unlawful acts and practices.

51. Pursuant to AS 45.50.537, GMC is also entitled to recover its actual reasonable attorneys' fees.

Wherefore, GMC prays for the following relief:

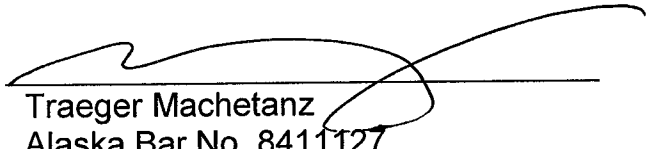
- A. Judgment for actual damages in an amount not less than \$1.6 million dollars, the exact amount of which will be proven at trial.
- B. Trebling of those damages pursuant to AS 45.50.531.
- C. Actual reasonable attorneys' fees pursuant to AS 45.50.537 and other applicable statutes and civil rules.
- D. Costs pursuant to the applicable statutes and civil rules.

Such other relief as the court may deem just and equitable under the circumstances.

Dated: March 29, 2012

OLES MORRISON RINKER & BAKER LLP
Attorneys for Plaintiff GMC Contracting, Inc.

By:


Traeger Machetanz
Alaska Bar No. 8411127
Jessy Vasquez
Alaska Bar No. 0911065

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Clerk of the Trial Courts

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17 York corporation,

18 Defendant.

19 Case No. 3AN-12- 6209 CI

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff, GMC Contracting, Inc., by and through its counsel of record, Oles
22 Morrison Rinker & Baker LLP hereby demands trial by jury in the above-entitled
23 action.

24 Dated: March 29, 2012

25 OLES MORRISON RINKER & BAKER LLP
Attorneys for Plaintiff GMC Contracting, Inc.

By: _____

Traeger Machetanz
Alaska Bar No. 8411127
Jessy Vasquez
Alaska Bar No. 0911065

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Demand for Jury Trial

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